TRANSMITTAL LETTER (General - Patent Pending)	Docket No. ELAND.0001

In Re Application Of: Christopher ROWDEN

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/654,571	1 September 2000	P. PAPPAS	20987	2628	6908

Title: METHOD AND SYSTEM OF PRODUCING A LANDSCAPE PLAN

COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Response to Restriction Requirement

in the above identified application.

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Dated: **14 December 2006**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent application of	:	
Christopher M. Rowden	:	Group Art Unit 2628
Application No. 09/654,571	:	Examiner Peter PAPPAS
Filed 1 September 2000	:	

METHOD AND SYSTEM OF PRODUCING A LANDSCAPE PLAN

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Patent and Trademark Office
Customer Window, **Mail Stop Amendment**
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the Office Action of 17 November 2006, Applicant elects Claims 9-16 and 18-20, drawn to producing a landscape plan using symbols to indicate the location of plants. The election is **with** traverse.

STATEMENT OF REASONS FOR TRAVERSAL OF RESTRICTION REQUIREMENT

Applicant respectfully submits that the Restriction Requirement fails to meet the requirements of M.P.E.P. §§ 803 and 808. To maintain a restriction requirement, M.P.E.P. § 808 requires that the Examiner: (1) provide reasons why the inventions as claimed are either independent or distinct; and (2) state the reasons for insisting upon restriction therebetween.

At this time, Applicant does not admit or deny that the Examiner's contention that the inventions as claimed are either independent or distinct

However, Applicant respectfully submits that the Office Action has failed to provide sufficient reasons for insisting upon the restriction. In that regard, M.P.E.P. § 803 provides:

"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on its merits, even though it includes claims to independent or distinct inventions."

The Office Action states that examination of all of the pending claims would impose a serious burden.

Applicant respectfully traverses this statement and furthermore respectfully submits that examination of all of the pending claims should impose no burden at all . . . particularly considering the fact that such an examination has (theoretically) already been performed at least three times!

This application has been pending at the United State Patent Office now **for over six years**! The first Office Action in this case issued **over three and one-half years ago**! This application has been allowed, withdrawn from issue by the PTO, examined two more times, and finally taken to Appeal by Applicant almost **five months ago**. Now, after all of these years of prior art searches and examinations, and in response to Applicant's nearly-desperate efforts to get their case heard before the Board of Patent Appeals, the PTO reopens prosecution of Applicant's application (again) and - **for the very first time** - imposes a Restriction Requirement.

The undersigned attorney respectfully submits that if there has ever been a case where search and examination of an application can be made without serious burden, after over six years in the PTO including numerous Office Actions, this is that case. Indeed, it seems that any examination of unelected claims 1-8 would require a search of the classification unit designated for claims 9-16 and 18-20 in any event.

In contrast to imposing a serious burden on the PTO, the imposition of a restriction requirement at this late date imposes a serious burden on Applicant, who must wait untold additional years to have any divisional application for the unelected claims percolate to the top of the very long application queue that awaits him in the art unit to which those claims are destined to be assigned. This burden is compounded by the fact that Applicant's application has apparently been assigned to a new patent

examiner after all of this time. Indeed, fundamental fairness to Applicant demands that after over six years, the PTO examine all of the pending claims and either allow them, or permit Applicant the courtesy of proceeding to the Federal Circuit and having a decision on Applicant's claims rendered by an independent and unbiased court.

Therefore, Applicant respectfully submits that no serious burden is presented to examine all of the claims of the pending application.

Accordingly, for at least these reasons, Applicant respectfully submits that the Restriction Requirement is improper and respectfully requests that it be withdrawn.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner withdraw the restriction requirement, reexamine the present application, allow claims 1-16 and 18-20, and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283-0720 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,
VOLENTINE FRANCOS & WHITT, P.L.L.C.

Date: 14 December 2006

By: _____
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